

Lobbyist Registry (S. Mandel)

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Recommendation:

That the October 31, 2006, Office of the City Manager report 2006CMC080, be received for information.

Report Summary

This report responds to an inquiry of Mayor S. Mandel regarding options available for instituting a lobbyist registry for the City of Edmonton.

Previous Council/Committee Action

At the August 29, 2006, City Council meeting Mayor S. Mandel made the following inquiry:

“One of the best objectives of any political body is to operate in as open and fair an atmosphere as can possibly be achieved. This standard should be held both in what we do in this Chamber as well as outside.

Whether fair or not, often the largest criticism levelled at Council is in how we deal with land use and zoning issues and how lobbying is conducted on these issues. Lobbying around any issue is a fair and proper activity, but it is desirable to ensure as much transparency as possible in how these actions are carried out.

For this reason, I am requesting that Administration make recommendations to Executive Committee on the options available for instituting a Lobbyist Registry for the City of Edmonton.

I would like Administration to look at examples of registries which have been set up at the municipal level in other jurisdictions across Canada and in other countries and report back on the scope and operation of these programs as well

as measurements which have been put in place to determine level of public and industry satisfaction with them.”

Report

- Increased public expectation for easily accessible information on government decision making and confidence in the conduct of public officials and staff have resulted in the pressure for lobbyist registries at all levels of government.
- A common misconception of the lobbyist registry is that it is intended to prevent illegal or unethical behaviour. In most jurisdictions, illegal or unethical behaviour is dealt with through other pieces of legislation or administrative policies such as codes of conduct, disclosure bylaws, professional standards, industry codes, the Criminal Code, procurement policies, disclosure policies, whistle blowing policies, and campaign financing legislation. Therefore, the registry works along side other ethics policies and focuses on documenting legal activities to allow open and transparent interactions with government.
- Lobbying and lobbyist registries are generally a North American occurrence. In Canada, the federal government, and provinces of Ontario, Nova Scotia, Quebec, British Columbia and Newfoundland and Labrador have created lobbyist registration systems at the federal and provincial level. Lobbying in the U.S. is very political in a recognized and transparent sense and most states and large municipalities have lobbyist registries. (Toronto Computer Leasing Inquiry, 2003)

- The Canadian federal government has established a set of principles that establishes clear expectations for Canadian lobbyist registries and with the exception of Quebec, sets the tone for registries across Canada. The federal principles attempt to strike a balance between lobbying as a legitimate activity and the importance of transparency in government. The four principles as stated in the *Lobbyists Registration Act* are as follows:
 - That free and open access to government is an important matter of public interest.
 - Lobbying public office holders is a legitimate activity.
 - It is desirable that public office holders and the public be able to know who is attempting to influence government.
 - A system of registration of paid lobbyists should not impede free and open access to government.
- People, activities and things in, on or near a public place or place that is open to the public;
- Businesses, business activities and persons engaged in business.
- Section 8(a) allows a bylaw to regulate or prohibit.
- Section 9 is a very broad power to:
 - (a) Give broad authority to councils and to respect their right to govern municipalities in whatever way the councils consider appropriate, within the jurisdiction given to them...
 - (b) Enhance the ability of councils to respond to present and future issues in their municipalities.

Scope and Operations

- Existing registries have similar underlying principles, but differ depending on how each jurisdiction answers the following questions:
 - **What is defined as lobbying?** Lobbying in the U.S has an emphasis on the legislative process, whereas Canadian jurisdictions tend to go beyond legislation and cover the executive and government departments and deal with a broad range of decision making such as grants, contracting, and program decisions. Definitions of lobbying are found in Attachment 1.
 - **Who is defined as a lobbyist?** All jurisdictions emphasize compensation as the main factor determining whether a lobbyist is required to register. Many U.S. jurisdictions have monetary thresholds for which registration is

Municipal Government Act

The following legislation from the *Municipal Government Act* gives the City of Edmonton the ability to establish a lobbyist registry:

- Section 3(a) states that the **purposes** of a municipality are to provide good government.
- Section 7 allows a council to pass bylaws for municipal **purposes** respecting:
 - Safety, health and welfare of people and the protection of people and property;

not required, whereas Canadian jurisdictions have no monetary thresholds. Attachment 2 provides examples of lobbyist scope.

- **Who is defined as a public official?**

Definitions of public officials vary from being limited only to elected officials holding office to including all employees of public office regardless of function as shown in Attachment 3.

- **What information has to be disclosed?** Each jurisdiction decides what information is required from lobbyists. Most Canadian jurisdictions have different requirements for each of the three different types of lobbyists. Attachment 4 provides common disclosure criteria.

- **How is the lobbyist registry administered?** All registries are administered on-line by a registrar or a clerk. Attachment 5 provides general duties performed.

- **How is the lobbyist registry enforced?** The onus is on the lobbyist to register. Education of lobbyists, review of complaints, administration reviews and penalties are utilized to enforce lobbyist registries. More detail is provided in Attachment 6.

Municipal Examples

- Many U.S. municipalities have lobbyist registries at the municipal level.
- Currently no Canadian municipality maintains a formal lobbyist registry.
- Quebec legislation is broad in scope and the province maintains one lobbyist

registry for both provincial and municipal lobbyists to register.

- Toronto is currently in the process of developing a registry. Implementation is scheduled for January of 2008.
- Prior to amalgamation, Toronto was the only municipality that had a comprehensive lobbyist disclosure system. This system was discontinued shortly after amalgamation in 1997.
- The amalgamated City of Toronto introduced a lobbyist disclosure system in 2004 pertaining to purchasing and supply. Starting in 2003, Members of Council voluntarily implemented an interim lobbyist registry in their offices, pending necessary provincial authority to establish a more formal and permanent lobbyist registry system. Participating councillors keep a simple register in their office and require all lobbyists to sign in. At the end of each month, councillors send a copy of their register to the City Clerk's Office, where it is available for public review. (City of Toronto, 2006) Currently, a steering committee is establishing the framework for Toronto's lobbyist registry as the province passed legislation requiring the City of Toronto to keep a lobbyist registry in June 2006. The provincial legislation is found in Attachment 7.
- Typically these systems are overseen by a Registrar or Clerk. Failure to register or disclose is an offence but monitoring such failure is a difficult task. However, while penalties appear limited, the impact on reputation on a lobbyist can be significantly damaging. Use of the systems may be an effective device for

monitoring as well as informing the public about who actually lobbies.

Public and Industry Satisfaction

- As there are no current Canadian registries at the municipal level, the following statistics are taken from the federal *Lobbyist Registration Act* Annual Report 2005-2006:
 - In 2004-2005, two administrative reviews took place resulting in formal investigation. No charges were laid.
 - In 2005-2006, nine administrative reviews have been undertaken and are on-going.
 - In 2005-2006, 6,994 lobbyist registrations were processed, of which 5,347 were consultants, 617 were in-house corporations, and 1,030 were in-house organization lobbyists.
 - For 2005-2006, the on-line lobbyist registry received 82,330 visits during which 379,720 pages were accessed. This was a 96 percent increase from the previous year. This resulted from the new user-friendly website which allowed users to access more information directly with less navigation.
- Since inception in 1989, the federal registry was criticized as having the scope too narrow, registration requirements modest, sanctions inadequate and investigative powers limited. Periodic Parliamentary reviews were put in place to allow public feedback on operation and to offer improvements to rectify any deficiencies. As a result of the reviews,

scope has since been broadened, disclosure requirements expanded, sanctions increased and investigative powers enhanced. (Campbell 2006) The 2006 review resulted in the most recent improvements to the registry.

Background Information Attached

1. What is defined as lobbying?
2. Who is defined as a lobbyist?
3. Who is defined as a public official?
4. What information has to be disclosed?
5. How is the lobbyist registry administered?
6. How is the lobbyist registry enforced?
7. Province of Ontario – Bill 53 – Stronger Toronto for a Stronger Ontario
8. Bibliography

Background Information Available on Request

1. Toronto Computer Leasing Inquiry
Research Paper *Lobbyist Registration*,
Volume 1: Comparative Overview

What is Lobbying?

In Canada and United States, lobbying is defined in relatively consistent terms, although with minor differences in scope. The following examples of definitions of lobbying are taken from *Toronto Computer Leasing Inquiry, Research Paper LOBBYIST REGISTRATION, Volume 1: Comparative Overview*:

United States Jurisdictions

- Influencing or attempting to influence legislative action or non-action through oral or written communication or attempting to obtain the goodwill of a member or employee of the Legislature. (*State of Florida*)
- Communication by any means, or paying others to communicate by any means, with any legislative official for the purpose of influencing any legislative action. (*State of Illinois*)
- Communicating with a public Official for the purpose of influencing the passage, defeat, amendment, or postponement of legislative or executive action. (*State of Utah*)
- Attempts by paid lobbyists to influence public officials, with influence meaning promoting, supporting, opposing or seeking to modify or delay any action on municipal legislation by any means, including but not limited to providing or using persuasion, information, statistics, analyses or studies. (*City of Los Angeles*)

Government of Canada

- Lobbying involves individuals who are paid to communicate with federal public office holders in respect of any legislative proposal, the introduction of a Bill or resolution, amendments to regulations, the development or amendment of a policy or program, the awarding of a grant, contribution, tax credit or other financial benefit and, in the specific case of consultant lobbyists, the awarding of a government contract.

Note: In 2005, federal legislation was amended to remove “in an attempt to influence” placing the emphasis on “communicate”.

Who is a lobbyist?

Canadian Jurisdictions

- Canadian jurisdictions, with the exception of Quebec use consistent definitions of who is considered a lobbyist. The Government of Canada's *Lobbyist Registration Act* identifies three types of lobbyist:
 1. Consultant lobbyists: people who are paid to lobby for clients.
 2. In-house lobbyists (corporations): Those are employees of a business who lobby for their employer as a significant part of their duties (20% or more).
 3. In-house lobbyist (organization): Those are employees of not-for-profit organizations in which one or more employees lobby. They work in a setting where the collective time devoted to lobbying for all those employees works out to be the same as a significant part of one employee's duties (20% or more).

Note: Quebec does not use percentage of time as a requirement.

- Canadian jurisdictions exempt unpaid volunteers from registration; however, there is no minimum compensation threshold below which an individual is not required to register.

U.S Jurisdictions

- U.S jurisdictions are consistent with defining lobbyists as either employers of lobbyists or individual lobbyists themselves.

The following definition is from the State of Indiana:

Employer lobbyist: organizations, associations, corporations, partnerships, firms, or individuals that compensate another to perform lobbying services on behalf of the employer lobbyist.

Compensated lobbyist: an individual, organization, association, corporation, partnership or firm that receives compensations for lobbying services rendered on behalf of a client.

- U.S. jurisdictions are generally quite specific in that the key defining component is compensation as the following examples show:

U.S. Federal Government: The exemption threshold is \$5,000 in lobbying income (for consultant lobbyists) for a particular client or \$20,000 in expenses for an organization whose employees engage in lobbying.

State of Washington: Individuals engaged in a total of four days of lobbying in a three-month period or incurring less than \$25 in expenditures on behalf of or for public officials are exempt from registration.

Definition of Public Official

Canadian Jurisdictions

Common definitions focus on elected officials and their staff, government appointees and employees, including agencies, boards, and commission, and the military/police.

The following definition is from the Province of Ontario's *Stronger City of Toronto for a Stronger Ontario Act, 2005*:

"public office holder" means,

- (a) a member of city council and any person on his or her staff,
- (b) an officer or employee of the City,
- (c) a member of a local board (restricted definition) of the City and any person on his or her staff,
- (d) an officer, director or employee of a local board (restricted definition) of the City, and
- (e) such other persons as may be determined by city council who are appointed to any office or body by city council or by a local board (restricted definition) of the City.

U.S. Jurisdictions

U.S. Federal Government – Defined as the President, Vice President, Member of Congress or any other specific federal officer, including certain high-ranking members of uniformed service.

What Information Needs to be Disclosed?

Most lobbyist registries in Canadian jurisdiction follow the federal model outlined in the *Lobbyist Registration Act*. The requirements for each of the three lobbyist categories (consultant, in-house corporations, and in-house organizations) vary slightly, but generally the following information must be disclosed for each lobbying being undertaken:

- Name, position title and business address of the lobbyist;
- Name and business address of the lobbying firm;
- Client name and business address;
- Name of the principal representative of the client;
- Name and business address of any person or organization that controls or directs the client's activities;
- If the client is a corporation, the name and business address of the parent corporation and those subsidiaries which directly benefit from the lobbying;
- If the client is a coalition, the names and business addresses of the corporate and organizational members;
- If the individual is a former public office holder, a description of the offices held;
- Subject matters including the specific legislative proposal, bill or resolution, regulation, policy, program, grant, contribution, other financial benefit or contract sought;
- Name of each department or other governmental institution lobbied;
- Source and amount of any government funding provided to the client;
- Whether payment is contingent on the success of the lobbying; and
- Communication techniques.

Government of Canada: A Guide to Registration: <http://www.orl-bdl.gc.ca/epic/internet/inlobbyist-lobbyiste.nsf/en/nx00112e.html>

How is the lobbyist registry administered?

- The Registrar or Clerk generally performs the following duties:
 - Establish and maintain the registry and administer the lobbyist registration process.
 - Clarify information on a registration form or other submitted documents.
 - Identify omissions and inconsistencies and communicate with the lobbyist to ensure they are corrected, or to request additional information.
 - Provide advice and information about the registration system to lobbyists, public office holders, the public and other groups, e.g. the media.
 - Ensure public accessibility to the information contained in the Lobbyist Registry.
 - Provide annual reports and statistics pertaining to the Lobbyist Registry.
- All Canadian models allow for on-line registration. More than 99 percent of transactions including registration, amendments, renewals, and terminations are completed electronically by the Canadian federal lobbyist system (Lobbyists Registration Act, Annual Report 2005-2006). On-line registries allow anyone to search by keyword, lobbyist name, company/organization name, subject matter, lobbyist type, lobbyist status (active/terminated), date/timeframe, and location.
- A review is triggered by either a complaint or an administrative review. An investigation is conducted if there are reasonable grounds that a breach has taken place.
- Registration fees range from \$53-\$150 for registering on line and some jurisdictions charge a larger fee for paper filing.

How is the lobbyist registry enforced?

Government of Canada Example

It is the responsibility of lobbyists to comply with the Act.

Ongoing education and communications programs are intended to help facilitate compliance with the Act. The Registrar may also issue advisory opinions and interpretation bulletins to help lobbyists understand the Act's registration provisions.

The Act provides for substantial penalties for lobbyists if they fail to register, or make false or misleading statements in their registration forms. If, during the course of an investigation, the Registrar believes on reasonable grounds that a person has committed an offence under the Act or any other Act of Parliament or of the legislature of a province, the Registrar may advise a peace officer having jurisdiction to investigate the alleged offence. Section 14 of the Act states that such contraventions may carry fines of up to \$25,000 or jail terms of up to two years upon summary conviction. The legislation sets a two-year limitation period from the date of the alleged offence for enforcement proceedings, after which no charges can be laid.

The Registrar (and his or her delegates) has the authority to request clarification or verification of any information submitted by lobbyists. Under the Act, lobbyists are obligated to respond to these requests in a timely fashion.

A Guide to Registration: <http://www.orl-bdl.gc.ca/epic/internet/inlobbyist-lobbyiste.nsf/en/nx00112e.html>

City of Los Angeles Example

The City of Los Angeles requires every person required to register attend a City lobbying information session at least once every two calendar years. On top of court imposed civil penalties for non-compliance, Los Angeles allows for administrative penalties of up to \$5,000 per violation for late filing.

Province of Ontario – Bill 53 – Stronger Toronto for a Stronger Ontario

The Province of Ontario passed Bill 53 – Stronger City of Toronto for a Stronger Ontario Act June 2006 (s. 165) requiring the city to establish a lobbyist registry and have it available to the public in the time and manner that the City determines fit. The Bill permits the City to perform any or all of the following through a bylaw:

1. Define "lobby".
2. Require persons who lobby public office holders to file returns and give information to the City.
3. Specify the returns to be filed and the information to be given to the City by persons who lobby public office holders and specify the time within which the returns must be filed and the information provided.
4. Exempt persons from the requirement to file returns and provide information.
5. Specify activities with respect to which the requirement to file returns and provide information does not apply.
6. Establish a code of conduct for persons who lobby public office holders.
7. Prohibit former public office holders from lobbying current public office holders for the period of time specified in the by-law.
8. Prohibit a person from lobbying public office holders without being registered.
9. Impose conditions for registration, continued registration or a renewal of registration.
10. Refuse to register a person, and suspend or revoke a registration.
11. Prohibit persons who lobby public office holders from receiving payment that is in whole or in part contingent on the successful outcome of any lobbying activities.

The legislative intent of this section is presumably to provide framework for the required registry but does not require that all elements of the framework be enacted by bylaw.

Bibliography

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